IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8983 OF 2005

Nanasaheb Tukaram Mohite ..Petitioner.
Vs.
Maharashtra State Textile
Corporation Limited & anr. ..
Respondents.

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Mr. P.B. Shah for the Petitioner.
Mr. A.Y. Sakhare, Senior Advocate instructed by M/s. YKS Legal for Respondent No.1.
Mrs. M.P. Thakur, Assistant Government Pleader for Respondent No.2.

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**CORAM : KSHITIJ R. VYAS, C.J. &**
**DR.D.Y.CHANDRACHUD, J.**

14th March, 2006.

P.C. :

1. In this Petition the Petitioner challenges the order dated 25th August, 2005 whereby Respondent No.1 rejected the representation dated 19th April, 2005 made by the Petitioner seeking retirement under Gujarat Pattern Voluntary Retirement Scheme.

2. The Petitioner has also prayed for a direction to Respondent No.1 to accept the application made by the Petitioner under the

Voluntary Retirement Scheme and to pay the benefits arising therefrom. The Petitioner was initially appointed as supervisor by Respondent No.1 on 1st October, 1978 and thereafter promoted from time to time. He was working in the post of Deputy Manager (Costing) at M/s. Narsinggirji Mills, Solapur. It appears that the Voluntary Retirement Scheme came to be floated by Respondent No.1 on certain conditions. The Petitioner on 23rd March, 1999 applied under the said Voluntary Retirement Scheme and requested Respondent No.1 to consider the same favourably. On 30th June, 2002, M/s. Narsinggirji Mills came to be closed down in accordance with the policy decision of the State Government. It is the case of the Petitioner that the General Manager of M/s. Narsinggirji Mills recommended the case of the Petitioner to Respondent No.1 for accepting his resignation under the Voluntary Retirement Scheme on 25th June, 2003. It is the case of the Petitioner that on 18th January, 2005 once again he had requested Respondent No.1 to consider his case. However, he was for the first time informed on 24th January, 2005 that his application has not been considered favourably. In fact, Respondent No.1 on 6th April, 2005 informed the Petitioner that as he was an M. S. T. C. Grade Officer, there was administrative / account related work

available in N. G. M. / other mills, and therefore the case has not been considered favourably. On 19th August, 2005, the Petitioner again requested Respondent No.2 to reconsider his case. It was rejected on 25th August, 2005. Hence, the Petition.

3. The learned counsel appearing for the Petitioner submitted that the just claim of the Petitioner seeking Voluntary Retirement Scheme was rejected without any valid reasons inspite of the fact that the Petitioner complied with and was eligible for the Voluntary Retirement Scheme. The learned counsel also submitted that the rejection of the claim is not only unjustified but also discriminatory. Respondent No.1 has considered the case of other similarly situated persons by granting Voluntary Retirement. The learned counsel appearing for Respondent No.1 on the other hand while admitting the claim has submitted that the Petitioner cannot claim Voluntary Retirement as a matter of right. From the affidavit in reply of Respondent No.1 it appears that Respondent No.1 accepted the application submitted by the Mill Grade employees under Gujarat Pattern Voluntary Retirement Scheme ( GSTC VRS), at the time of closure of the Mill, since their services were not transferable. It is also the say of Respondent No.1 that with a

view to complete the closure of mills all the employees working in the mill submitted resignations, excluding MSTC Grade Officers attached to the mill, as their services were transferable. Accordingly, all the employees, workers, clerks and supervisors have been relieved from the mill service under Gujarat Pattern Voluntary Retirement Scheme. It is further the case of Respondent No.1 that since the services of the Petitioner were required to be continued for attending the post closure activities, including the cost audit work and as the Petitioner's services were required by the organization, the Petitioner continued in the regular employment. It is the specific case of Respondent No.1 that as the cost audit work was to be completed and there was other pending work relating to accounts, chawl matters etc., it was decided to avail of the services of the Petitioner since he belongs to the cost audit department.

4. In view of the averments, it is claimed that the Petitioner cannot, as a matter of right, claim under the Voluntary Retirement Scheme. Respondent No.1 was justified in denying the Voluntary Retirement Scheme because of the pendency of the cost audit and since the Petitioner belongs to the cost audit department.

Having gone through the provisions of the scheme, it is clear that the General Manager of the mill is not the authority taking policy decisions, as decisions are taken by the Managing Director of the Corporation. Therefore, it is not obligatory on the part of the Respondents to accept the proposal submitted by the General Manager of the mill. We therefore see no substance in the submissions advanced before us that the case of the Petitioner was recommended by the Respondents. With reference to the allegation viz. that the other officers were relieved under the Voluntary Retirement Scheme, Respondent No.1 has stated in paragraph 17 of the affidavit in reply as under :

> "I say that with a view to restrict the financial expenses, some of the officers have been relieved under the said Scheme and thereafter, some officers have been appointed as Consultants on fixed professional charges. I say that except the fixed professional charges, no other benefits are applicable to such officers including D.A., H.R.A., Leave etc. I say that the statement showing the details of gross salary which was being paid to such officers, when they were in regular employment and the consolidated professional charges, being paid to them, is annexed herewith from which it could be seen the act of the Respondent No.1 is with genuine reason to curtail/ restrict the financial expenses. I say that the aforesaid officers have been continued as Consultants so as to initiate the winding up process of the Corporation."

From the aforesaid averments it is clear that the other persons have been continued as consultants for the purpose of initiating the winding up process of the Corporation.

5. We therefore see no merit in the submission. Apart from the fact that there is no merit in the Petition, the Petitioner is not entitled to claim under the Voluntary Retirement Scheme as the Petitioner is the only employee till date even after the closure of the mill, as already noted, has earned the salary and other benefits amounting to Rs.9,56,662/- and he is likely to be retired on attaining the age of superannuation in a months time. The Petition, therefore, for all purposes has become academic and therefore no useful purpose would be served by entertaining the Petition. The Petition is dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD,

J.